

**Confederated Tribes *of the*
Umatilla Indian Reservation**

Board of Trustees & General Council



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Via U.S. Mail / E-Mail

February 13, 2014

Ms. Gina McCarthy
Administrator
Office of the Administrator (4101M)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington D.C. 20460

Re: Comments on EPA's Continued Authorization of the Use of PCBs

Dear Administrator McCarthy:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) appreciates the efforts of the U.S. Environmental Protection Agency (EPA) to address the problem of polychlorinated biphenyls (PCBs) in the environment. We support your on-going work to reduce and remediate PCBs from "legacy" sources. However, much more can and should be done to phase out ***all*** PCB uses and the generation of new PCB sources and products and their concomitant wastes. CTUIR urges EPA to halt further additions to the already-daunting burden of PCBs plaguing our people and communities.

EPA should change its policy and revise its rules which currently allow up to 50 parts per million (ppm) of PCBs in new "excluded" products. EPA policies and rules should not allow ***any*** PCBs in such products; the allowable limit should be ***zero*** (0). CTUIR opposes any rules that leave unchanged the current 50 ppm allowable limit.

In 2010, EPA announced that it would reconsider the authorized uses of PCBs.¹ In response to your notice, CTUIR submitted comments in a letter dated August 20, 2010. A copy of that letter is attached. We asked that you specifically reconsider the allowable 50 ppm PCB limit, and revise your rules so that new PCB sources are ultimately prohibited. We reiterate our earlier comments, which are incorporated herein by reference.

Nevertheless, EPA decided not to modify this aspect of the rules and left unchanged the 50 ppm limit. EPA's decision was made without the appropriate level of government-to-government consultation with affected Indian tribes. This decision is inconsistent with President Obama's November 5, 2009, "Memorandum for the Heads of Executive Departments and Agencies" on the subject of Tribal Consultation, which affirmed President Clinton's Executive Order 13175 of November 6, 2000, and charged federal agencies with "engaging in regular

¹ Advance Notice of Proposed Rulemaking: Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations; Docket ID No. EPA-HQ-OPPT-2009-0757, Federal Register, Vol. 75, No. 66 (April 7, 2010).

and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.”

EPA sought to obtain limited tribal input on December 12, 2013, when EPA Headquarters conducted two meetings/conference calls with tribal representatives.² During these meetings/calls, tribal representatives (including senior elected and policy representatives from CTUIR) again raised the issue of the 50 ppm allowable PCB limit, but the participating non-policy-level EPA staff dismissed our concerns and questions. The number and geographic range of tribal representatives trying to participate demonstrates that this issue is of significant interest to tribes across the country. Members of the Affiliated Tribes of Northwest Indians (ATNI)³ are considering a resolution calling for EPA to eliminate the 50 ppm PCB allowance at its convention next week. Given this substantial tribal interest and concern, you should be aware that any rules perpetuating the presence of PCBs in “excluded” products risk administrative and/or legal challenge.

Continuing to permit PCBs in amounts of up to 50 ppm is not supported by any public health-based rationale. The existing rules are more than thirty years old and by EPA’s own admission, are “based almost entirely on economic considerations.”⁴ PCBs already contaminate our fish and our water. They are a serious problem in the Pacific Northwest and throughout the nation. Only a few months ago another fish advisory was issued warning of PCBs in the Columbia River, in the primary zone where tribal fishing takes place.⁵ PCBs bio-accumulate. They do not degrade, nor do they dissipate. No amount is “too small” or safe. Any new sources merely exacerbate the already-existing problem of excessive PCBs in the environment. Allowing more only adds to the overall burden, and does nothing to diminish that burden.

Water and salmon are among our tribal First Foods. They are first in the serving order during our longhouse ceremonies. PCBs threaten these foods and our people. The risks to tribal peoples, other fish consumers, and the environment from PCBs far outweigh any possible “economic considerations” on which EPA “almost entirely” based its antiquated rules. In the Treaty of 1855 with the United States,⁶ CTUIR secured forever our long-standing “right of taking fish” from the Columbia River and its tributaries. That right meant then, and still means now, clean fish, fish without toxic contaminants. Unfortunately, that right has been ignored and undermined. Allowing even more PCB contamination further disregards our Treaty Rights and heightens the risks to our people. Fish consumption is part of our religion, culture and way of life. Our tribal members eat far

² EPA described these meetings/calls as “E.O. 13175 Tribal Consultations,” but they were not true government-to-government consultations between sovereigns.

³ ATNI is a regional organization, numbering 57 members, comprised of American Indians/Alaska Natives and tribes in Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska.

⁴ Advance Notice of Proposed Rulemaking: Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for Polychlorinated Biphenyls (PCBs);, Docket ID No. EPA-HQ-OPPT-2009-0757, Federal Register, Vol. 75, No. 66 (April 7, 2010), p. 17658.

⁵ “Limit consumption of some fish species near Bonneville Dam, middle Columbia River,” Oregon Health Authority (News Release), September 23, 2013, <http://www.oregon.gov/oha/news/Documents/2013-0923-mid-columbia-fish-advisory.pdf>.

⁶ 12 Stat. 945.

more fish than the “average” non-Indian—up to nine times as much.⁷ Thus we suffer disproportionate impacts from PCBs and other toxins.⁸

Beginning with a joint study of tribal fish consumption conducted by EPA Region 10 and the Columbia River Inter-Tribal Fish Commission and published in 1994,⁹ CTUIR has worked for nearly two decades to obtain safer, cleaner water for our fish and for our people. In 2011, working with EPA, we finally convinced the State of Oregon to adopt more stringent water quality standards which incorporated a fish consumption rate more accurately reflective of tribal consumption. In Oregon, we are now looking at implementation of the improved standards. In Washington and Idaho, tribes are working collaboratively with EPA and others as those States engage in the process of revisiting and potentially revising their water quality standards. Compliance with more stringent standards (which have or may be adopted) will be difficult if not impossible if PCBs continue to be allowed in certain commercial products. Failure to confront the dilemma of continued on-going PCB releases threatens to derail years of cooperative efforts in the region to improve the health of our waters and our fish.

Additionally, in conjunction with the various state standards revision processes, there are multiple discussions about addressing actual source reduction—eliminating the use and generation of toxics in the first place, instead of simply focusing on clean-up after-the-fact. Reducing the allowable PCB level to zero would do just that. Continuing to authorize PCB use would be contrary to regional source reduction initiatives.

Finally, allowing ongoing PCB use, and inevitably worsening the burdens of existing contamination, would be a failure by EPA to uphold its Trust Responsibility to CTUIR and other tribes to safeguard tribal trust resources. It would also violate EPA’s Environmental Justice policy.

It is a common public misconception that PCBs are “banned.” They are not. They should be. We should begin the process that leads to the eventual end of all new sources of PCBs in any amount. Protecting Native Americans from the continued, ongoing use and discharge of PCBs will benefit all people who use and enjoy fish, shellfish and the clean water needed to support and sustain them.

CTUIR, in our historic and judicially-recognized role as resource co-managers, has been at the forefront of region-wide actions to preserve and enhance salmon, water and other tribal First Foods. We have emphasized scientifically sound and rigorous strategies, cooperative working relationships, and cost-effective management.

⁷ See “A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin,” Columbia River Inter-Tribal Fish Commission (1994); <http://www.critfc.org/reports/a-fish-consumption-survey-of-the-umatilla-nez-perce-yakama-and-warm-springs-tribes-of-the-columbia-river-basin/>; <http://www.deq.idaho.gov/media/895853-fish-consumption-survey-1994.pdf> (hereinafter “Survey”).

⁸ In its rulemaking notice EPA itself acknowledged that:

Disadvantaged populations may be more exposed to PCBs in contaminated fish than members of the general population. . . . Indian tribes have subsistence lifestyles and rely on fish and mammals that may be caught in PCB contaminated waters and environs, as a primary source of nutrition. Fish in these waters may have been contaminated by both PCB wastes disposed of prior to the use authorizations, as well as releases that have occurred from the currently authorized use, distribution in commerce and disposal of PCBs.

⁹ Survey.

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Beyond these immediate approaches, we have always been guided by the wisdom of our ancestors, and concern for the next Seven Generations, as we have sought to maintain and practice our religion, culture and traditions. All this is threatened by ubiquitous toxics such as PCBs that are now so widespread around us. Every opportunity to reduce the amount of toxics that are created and released should be embraced. CTUIR urges you to revise your rules reducing the allowable level of PCBs in products from 50 ppm to zero (0).

CTUIR thanks you for considering our comments. If you have any questions or would like to discuss this matter further, please contact our First Foods Policy Program at (541) 276-3165.

Sincerely,



Gary Burke, Chairman
Board of Trustees

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Attachment: CTUIR DNR Letter to EPA, August 20, 2010

CC: Fish and Wildlife Commission
Tribal Water Commission
Dennis McLerran, Administrator, EPA Region 10
Jim Jones, EPA OCSPP
Tom Simons, EPA OCSPP
Sara Kemme, EPA OCSPP